

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

STATE OF TEXAS, §
§
Plaintiff, §
v. § Case No. 2:23-CV-00024-AM
ALEJANDRO MAYORKAS, §
Secretary of Homeland Security, *et al.*, §
§
Defendants. §

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE
DISPOSITIVE MOTION IN EXCESS OF TWENTY PAGES**

Defendants respectfully file this Motion for Leave to File Dispositive Motion in Excess of Twenty Pages, and in support state as follows:

Rule CV-7(c)(2) of the Local Rules states that dispositive motions filed with the Court shall be limited to twenty (20) pages in length, unless otherwise authorized by the Court.

On or about May 23, 2023, Plaintiff filed its original complaint, which sought vacatur and injunction of a regulation jointly promulgated by the Department of Homeland Security (DHS) and the Department of Justice (DOJ), which creates a carefully-calibrated presumption of asylum ineligibility for noncitizens who cross the southwest border into the United States after traveling through a third country, subject to certain exceptions and means of rebuttal. *See* ECF No. 1, Compl. ¶¶ 23-25, 53 & Request for Relief; Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314 (May 16, 2013) (the “Rule”); *see also* Circumvention of Lawful Pathways, 88 Fed. Reg. 11,704, 11,708 (Feb. 23, 2023) (notice of proposed rulemaking). With the Court’s leave, Defendants filed a 29-page motion to dismiss that original complaint. *See* ECF Nos. 18–20. Plaintiff subsequently sought leave to amend its complaint. *See* ECF No. 23. The Court granted

Plaintiff's motion for leave to amend and denied Defendants' original motion to dismiss without prejudice. ECF No. 29.

Plaintiff's First Amended Complaint adds factual allegations, amends Plaintiff's request for relief, and adds a third count challenging Defendants' alleged "use and implementation of" an appointment system for presentment at ports of entry. *See generally* ECF No. 30, First. Am. Compl. (FAC). Defendants have prepared a Motion to Dismiss the First Amended Complaint for lack of subject-matter jurisdiction and failure to state a claim. Defendants' Motion, attached hereto, is 33 pages long. The additional 13 pages are necessary to set forth the complex background concerning the events leading up to enactment of the Rule, the statutes governing the immigration processing of noncitizens who are governed by the Rule—including the Executive's authority to place noncitizens in expedited removal or non-expedited removal proceedings and to parole noncitizens—as well as to adequately present Defendants' jurisdictional and merits arguments for dismissal, including arguments and defenses specific to the newly-asserted Count 3. The requested page expansion is also warranted by the importance of the issues raised, which concern immigration and management of our nation's borders and ports of entry.

It is Defendants' belief that this case can properly be disposed of through this dispositive motion and valuable judicial resources may be saved if Defendants are permitted to file this Motion to Dismiss, which is in excess of twenty pages.

Defendants thus respectfully request that their motion be granted and that the attached Motion to Dismiss be filed, or, if the motion is denied, that the Court extend the deadline for Defendants to answer or otherwise respond to the Complaint.

Undersigned counsel conferred with counsel for Plaintiff, Amy S. Hilton, via email regarding this motion. On March 11, 2024, Ms. Hilton stated that Plaintiff does not oppose the relief requested.

Dated: March 15, 2024

Respectfully submitted,
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

WILLIAM C. PEACHEY
Director

EREZ REUVENI
Counsel

CHRISTINA P. GREER
BRIAN C. WARD
Senior Litigation Counsel

By: /s/ Katherine J. Shinners
KATHERINE J. SHINNERS
Senior Litigation Counsel
D.C. Bar No. 978141
U.S. Department of Justice, Civil Division
Office of Immigration Litigation – DCS
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 598-8259
Fax: (202) 305-7000
Email: katherine.j.shinners@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2024, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for Plaintiff.

/s/ Katherine J. Shinners
KATHERINE J. SHINNERS
Senior Litigation Counsel

CERTIFICATE OF CONFERENCE OF COUNSEL

I hereby certify that I conferred with counsel for Plaintiff, Amy S. Hilton, via email regarding this motion and all relief requested herein. On March 11, 2024, Ms. Hilton stated via email that Plaintiff does not oppose the relief requested.

/s/ Katherine J. Shinners
KATHERINE J. SHINNERS
Senior Litigation Counsel